

NOTICE  
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2013 IL App (4th) 111065-U  
NO. 4-11-1065  
IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

FILED  
December 11, 2013  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Livingston County
SHAN FIELDMAN,	)	No. 10CF199
Defendant-Appellant.	)	
	)	Honorable
	)	Jennifer H. Bauknecht,
	)	Judge Presiding.

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JUSTICE STEIGMANN delivered the judgment of the court.  
Presiding Justice Appleton and Justice Turner concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The appellate court affirmed the defendant's convictions for solicitation of murder for hire (720 ILCS 5/8-1.2(a) (West 2010)).
- ¶ 2 In May 2011, a jury convicted defendant, Shan Fieldman, of two counts of solicitation of murder for hire (720 ILCS 5/8-1.2(a) (West 2010)). In September 2011, the trial court sentenced defendant to concurrent terms of 36 years in prison.
- ¶ 3 Defendant *pro se* appeals, arguing that his convictions should be reversed because (1) the trial court violated his right to a fair arraignment hearing; (2) the State made false statements to conceal its lack of a prompt judicial determination of probable cause; (3) the police unlawfully arrested him in the absence of probable cause; (4) the court prevented him from presenting his defense by limiting his testimony regarding statements that a confidential

informant made to him; (5) the State violated certain eavesdropping provisions of the Code of Criminal Procedure of 1963 (Code); and (6) his trial counsel was ineffective. We disagree and affirm.

¶ 4

## I. BACKGROUND

¶ 5 Because defendant does not challenge the sufficiency of the State's evidence, we review only the facts necessary to place defendant's arguments into context. The following facts were gleaned from evidence presented at defendant's May 2011 jury trial.

¶ 6 In the summer of 2010, Trina Bennett, a confidential informant, advised Illinois State Police special agent Darrell Stafford that defendant was interested in hiring someone to murder his exwife, Shelley Fieldman. Stafford obtained a court order authorizing him to record defendant's telephone conversations. On July 22 and 23, 2010, Stafford made audio recordings of telephone conversations between Bennett and defendant. In those recorded conversations, Bennett arranged a meeting between defendant and Earl Candler, an undercover police sergeant posing as a "hit man."

¶ 7 On the evening of Friday, July 23, 2010, pursuant to the arrangements Bennett made with defendant over the phone, Candler met with defendant in the parking lot of the Walmart in Pontiac, Illinois. The meeting took place inside Candler's truck, which had been equipped with audio and video recording devices. Defendant told Candler that he wanted Shelley killed, stating further that if Shelley's boyfriend, Allan Chrossfield, was present when Candler encountered Shelley, Candler should kill him too.

¶ 8 Defendant agreed to pay Candler \$7,500 to kill both Shelley and Chrossfield. Defendant left Candler's vehicle and returned with \$100 for a down payment. Pursuant to

Candler's request, defendant wrote on a piece of paper, "I.O.U \$7,400 at the completion of the job." Candler told defendant that this would be their final interaction and that, by the same time next week, Shelley—and possibly Chrossfield—would be dead.

¶ 9 Police maintained surveillance of defendant following the meeting with Candler. Later in the evening, police arrested defendant during a traffic stop.

¶ 10 The State charged defendant with one count of solicitation of murder for hire (720 ILCS 5/8-1.2(a) (West 2010)) as to Shelley. In August 2010, the State amended the information, adding an additional count of solicitation of murder for hire as to Chrossfield. Defendant did not file any pretrial motions to suppress.

¶ 11 In May 2011, following a two-day trial, the jury convicted defendant on both counts. In September 2011, the trial court sentenced defendant to concurrent terms of 36 years' imprisonment.

¶ 12 This appeal followed.

¶ 13 II. ANALYSIS

¶ 14 A. Defendant's Initial Appearance

¶ 15 The record reflects that on the Saturday following defendant's Friday arrest, the trial court made a finding of probable cause based upon the State's oral proffer, and set defendant's bail at \$2 million. On the following Monday, defendant made his initial court appearance by closed-circuit television, and the State filed its charging information against him. The court again made a finding of probable cause based upon the State's oral proffer, granted defendant's request for appointment of the public defender, and continued the cause.

¶ 16 Defendant argues that his convictions should be reversed because the trial court

violated his right to a fair "arraignment" hearing. Specifically, defendant contends that the court erred by (1) depriving him of his right to counsel and (2) failing to inquire whether defendant (a) understood the nature of the charge against him and (b) was in fact guilty or not guilty. We disagree and note that the hearing at issue was not an arraignment hearing, but rather an initial appearance under section 109-1 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/109-1 (West 2010)).

¶ 17 "Under the fourth amendment of the United States Constitution, a defendant arrested without a warrant has the right to a probable cause hearing as a prerequisite to an extended restraint on liberty." *People v. Mitchell*, 366 Ill. App. 3d 1044, 1048, 853 N.E.2d 900, 906 (2006) (citing *Gerstein v. Pugh*, 420 U.S. 103, 114 (1975)). This initial appearance (sometimes referred to as a *Gerstein* hearing, a bail hearing, a bond hearing, or—incorrectly—as a preliminary hearing or arraignment) has been codified under section 109-1 of the Code. *People v. Sterling*, 357 Ill. App. 3d 235, 248, 828 N.E.2d 1264, 1276 (2005). That section provides, as follows:

"(a) A person arrested with or without a warrant shall be taken without unnecessary delay before the nearest and most accessible judge in that county \*\*\* and a charge shall be filed.

Whenever a person arrested either with or without a warrant is required to be taken before a judge, a charge may be filed against such person by way of a two-way closed circuit television system

\*\*\*.

(b) The judge shall:

(1) Inform the defendant of the charge against him and shall provide him with a copy of the charge.

(2) Advise the defendant of his right to counsel and if indigent shall appoint a public defender or licensed attorney at law of this State to represent him in accordance with the provisions of Section 113-3 of this Code.

(3) Schedule a preliminary hearing in appropriate cases; and

(4) Admit the defendant to bail in accordance with the provisions of Article 110 of this Code." 725 ILCS 5/109-1 (West 2010).

¶ 18 The record reflects that the trial court fully complied with section 109-1 of the Code at defendant's initial appearance. By its clear terms, section 109-1 of the Code requires the court to advise the defendant of his right to counsel and, if the defendant is indigent, appoint counsel. Defendant did not have a constitutional right to the representation of counsel *during* the initial appearance. *Gerstein*, 420 U.S. at 122, ("Because of its limited function and its nonadversary character, the probable cause determination is not a 'critical stage' in the prosecution that would require appointed counsel.")

¶ 19 Further, section 109-1 of the Code did not require the trial court to inquire whether defendant understood the nature of the charges against him, nor whether he was in fact guilty or not guilty. Accordingly, the court did not commit error at defendant's initial appearance.

¶ 20 B. The State's Representations at the Initial Appearance

¶ 21 Defendant argues that his convictions should be reversed because the State made false statements to conceal its lack of a prompt judicial determination of probable cause.

Specifically, defendant contends that the State falsely claimed at the Monday initial appearance that the trial court found probable cause during a bond hearing that occurred over the previous weekend. We disagree.

¶ 22 The record affirmatively rebuts defendant's bald assertion that the State made a false claim to the trial court. The record contains a written order dated Saturday, July 24, 2010, indicating that the court made a finding of probable cause based upon the State's oral proffer. This order unequivocally corroborates the State's assertion at defendant's Monday initial appearance. Accordingly, we reject defendant's argument.

¶ 23 C. Defendant's Arrest

¶ 24 Defendant argues that the police unlawfully arrested him in the absence of probable cause. However, defendant has forfeited this claim by failing to raise it in the trial court. *People v. Johnson*, 250 Ill. App. 3d 887, 893, 620 N.E.2d 506, 511 (1993) ("In order to preserve an argument, for the purpose of appeal, from a jury trial, the challenge must be presented to the trial court not only at the motion to suppress stage, but it must also be included in the defendant's post-trial motion."). Further, defendant does not argue that his trial counsel was ineffective for failing to challenge the lawfulness of his arrest.

¶ 25 Regardless, even if defendant had not forfeited his challenge to the lawfulness of his arrest, we would still conclude that his arrest was supported by probable cause. "Probable cause to arrest exists when the facts known to the officer at the time of the arrest are sufficient to

lead a reasonably cautious person to believe that the arrestee has committed a crime." *People v. Wear*, 229 Ill. 2d 545, 563, 893 N.E.2d 631, 642 (2008). At trial, Sergeant Hugh Roop testified that he conducted surveillance of the meeting between defendant and Candler, at which defendant unambiguously agreed to pay Candler \$7,500 to murder Shelley and Chrossfield. Roop followed defendant after that meeting and arrested him before he returned home. Although Roop was not physically present during the meeting between defendant and Candler, "[i]nformation possessed by officers working in concert is relevant in the determination of whether an arrest is lawful." *People v. Smith*, 222 Ill. App. 3d 473, 478-79, 584 N.E.2d 211, 215 (1991). The trial record clearly demonstrates that Roop had probable cause to arrest defendant.

¶ 26 D. The Trial Court's Ruling Limiting Defendant's Testimony

¶ 27 Defendant argues that the trial court prevented him from presenting his defense by limiting his testimony regarding statements that a confidential informant made to him. We disagree.

¶ 28 Defendant specifically contends that the trial court deprived him of his defense of lack of intent by barring him from testifying about prior conversations with Bennett, which caused him to fear Bennett and her criminal associates. In one such conversation, Bennett allegedly told defendant that she tied up an old man and shot him in the head. Defendant contends that his testimony would have demonstrated that his meeting with Candler was motivated by fear of Bennett and her criminal associates, and that he did not actually intend to hire Candler to murder Shelley and Chrossfield.

¶ 29 During the discussion of this issue at trial, the trial court asked defense counsel, "What is more or less probable without the evidence of Trina Bennett supposedly telling

[defendant] that she murdered some old guy?" Defense counsel responded only by saying that defendant would have reason to fear Bennett. The court ruled that Bennett's alleged statements to defendant were not relevant, explaining that "whether or not [Bennett] told him that she had killed a hundred people is not relevant to whether or not he intended to have his exwife be killed." The court allowed defendant to make a lengthy offer of proof, after which the court reaffirmed its ruling that the testimony was not relevant.

¶ 30 A defendant "is entitled to an opportunity to present his version of events within the confines of our rules of evidence." *People v. Jackson*, 2012 IL App (1st) 100398, ¶ 31, 965 N.E.2d 623. "It is well established that trial courts possess discretion in determining the admissibility of evidence, and a reviewing court may overturn a trial court's decision only when the record clearly demonstrates the court abused its discretion." *People v. Harris*, 231 Ill. 2d 582, 588, 901 N.E.2d 367, 370 (2008). "'Abuse of discretion" means clearly against logic; the question is not whether the appellate court agrees with the [trial] court, but whether the [trial] court acted arbitrarily, without employing conscientious judgment,' " or whether, considering all the circumstances, the court acted unreasonably and ignored recognized principles of law, which resulted in substantial prejudice. *Long v. Mathew*, 336 Ill. App. 3d 595, 600, 783 N.E.2d 1076, 1080 (2003) (quoting *State Farm Fire & Casualty Co. v. Leverton*, 314 Ill. App. 3d 1080, 1083, 732 N.E.2d 1094, 1096 (2000)).

¶ 31 The trial court's ruling was based on its determination that defendant's purported fear of Bennett was not relevant to the issue of whether defendant intended to hire Candler to kill Shelley and Chrossfield. The court determined that defendant was trying to prove that Bennett "was a really bad person" using words that Bennett said out of court. This reasoning was not

clearly against logic, arbitrary, or devoid of conscientious judgment. Defendant fails to persuade us that the court abused its discretion by limiting his testimony regarding Bennett's out-of-court statements to him.

¶ 32 E. Eavesdropping Provisions of the Code

¶ 33 Defendant argues that his convictions should be reversed because the State violated certain eavesdropping provisions of the Code. We disagree.

¶ 34 Despite his general references to section 108A-3 of the Code (725 ILCS 108A-3 (West 2010)) in his brief, defendant fails to assert how or when police violated any provision of the Code. Defendant merely cites section 108A-3 of the Code and states that his "case should be reversed or vacated; especially considering the daunting Orwellian ramifications of the State using and taking advantage of sophisticated devices, while ignoring and violating strict constitutional statutes." Because defendant appears to advance a general policy argument against the use of eavesdropping technology, rather than an actual claim of error based upon a violation of section 108A-3 of the Code, we decline to entertain his argument.

¶ 35 F. Ineffective Assistance of Counsel

¶ 36 Finally, defendant argues that his trial counsel was ineffective. Specifically, defendant contends that his trial counsel was ineffective for (1) failing to challenge the charging instrument; (2) filing a plea of not guilty and a demand for jury trial without consulting defendant; (3) waiving arraignment, reading of the charges, and "preliminary hearing argument" on the original and amended charges; (4) stipulating to the audio and video recordings instead of filing a motion to suppress evidence; (5) failing to call Bennett "and other witnesses"; and (6) failing to file a motion for a directed verdict. We decline to rule on defendant's claim.

¶ 37

1. *The Two-Pronged Strickland Test for Ineffective-Assistance-of-Counsel Claims*

¶ 38

In determining whether a defendant was denied the effective assistance of counsel, we apply the two-pronged test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). To prevail on a claim of ineffective assistance of counsel, a defendant must show that counsel's performance was deficient and that the deficient performance resulted in prejudice to the defendant. *Strickland*, 466 U.S. at 687; *People v. Patterson*, 217 Ill. 2d 407, 438, 841 N.E.2d 889, 908 (2005). To establish deficient performance, the defendant must show his attorney's performance fell below an objective standard of reasonableness. *People v. Evans*, 209 Ill. 2d 194, 219, 808 N.E.2d 939, 953 (2004). Prejudice is established when a reasonable probability exists that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Evans*, 209 Ill. 2d at 219-20, 808 N.E.2d at 953. The failure to satisfy either prong of the *Strickland* test precludes a finding of ineffective assistance of counsel. *People v. Brown*, 236 Ill. 2d 175, 185, 923 N.E.2d 748, 754 (2010).

¶ 39

As to the first prong of the test, "in order to establish deficient performance, the defendant must overcome the strong presumption that the challenged action or inaction may have been the product of sound trial strategy." *People v. Manning*, 241 Ill. 2d 319, 327, 948 N.E.2d 542, 547 (2011) (citing *People v. Smith*, 195 Ill. 2d 179, 188, 745 N.E.2d 1194, 1200 (2000)). Mistakes in strategy or tactics do not, alone, amount to ineffectiveness of counsel. *People v. Palmer*, 162 Ill. 2d 465, 476, 643 N.E.2d 797, 801-02 (1994).

¶ 40

2. *Ineffective-Assistance-of-Counsel Claims on Direct Appeal*

¶ 41

This court has noted the difficulty of resolving ineffective-assistance-of-counsel

claims on direct appeal instead of on collateral review when doing so requires consideration of matters outside of the record on appeal. See *People v. Kunze*, 193 Ill. App. 3d 708, 725-26, 550 N.E.2d 284, 296 (1990) (declining to consider the defendant's ineffective-assistance arguments because such claims are better made in a petition for postconviction relief where a complete record can be made and the attorney-client privilege does not apply).

¶ 42 In *People v. Durgan*, 346 Ill. App. 3d 1121, 1142, 806 N.E.2d 1233, 1249 (2004), this court, quoting the United States Supreme Court's decision in *Massaro v. United States*, 538 U.S. 500, 504-05 (2003), explained why it is preferable that an ineffective-assistance-of-counsel claim be brought on collateral review instead of on direct appeal, as follows:

"When an ineffective-assistance claim is brought on direct appeal, appellate counsel and the court must proceed on a trial record not developed precisely for the object of litigating or preserving the claim and thus often incomplete or inadequate for this purpose. Under [*Strickland*], a defendant claiming ineffective counsel must show that counsel's actions were not supported by a reasonable strategy and that the error was prejudicial. The evidence introduced at trial, however, will be devoted to issues of guilt or innocence, and the resulting record in many cases will not disclose the facts necessary to decide either prong of the *Strickland* analysis. If the alleged error is one of commission, the record may reflect the action taken by counsel but not the reasons for it. The appellate court may have no way of knowing whether a seemingly

unusual or misguided action by counsel had a sound strategic motive or was taken because the counsel's alternatives were even worse. See [*Guinan v. United States*, 6 F.3d 468, 473 (7th Cir. 1993)] (Easterbrook, J., concurring) ('No matter how odd or deficient trial counsel's performance may seem, that lawyer may have had a reason for acting as he did \*\*\* Or it may turn out that counsel's overall performance was sufficient despite a glaring omission \*\*\* ')." (Internal quotations omitted.)

¶ 43 Guided by the aforementioned principles, we conclude that the record is not sufficiently complete to allow us to resolve defendant's ineffective-assistance-of-counsel claims. Defendant's claims, the merits of which we express no opinion on, would be more appropriately addressed in proceedings under the Post-Conviction Hearing Act (725 ILCS 5/122–1 through 122–8 (West 2012)).

¶ 44 III. CONCLUSION

¶ 45 Defendant fails to demonstrate that the trial court committed reversible error as to any of the issues presented in this appeal. Accordingly, we affirm. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 46 Affirmed.